No. 48000-0-II

WASHINGTON STATE COURT OF APPEALS
DIVISION II

THURSTON COUNTY et al, RESPONDENTS

v.

DONNA ZINK, APPELLANT

OPENING BRIEF OF APPELLANT DONNA ZINK

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I. INTRODUCTION

The Washington Public Records Act (PRA), is a strongly worded mandate of the people demanding that members of the public be given **timely access to the "publics" records** in order for the people to remain in control over the instruments they created (RCW 42.56.030). Under the strongly worded mandate of the PRA all public agencies in Washington State must provide access to the public records owned, used, created or maintained by that specific public agency unless a specific explicit exemption applies to the requested records even if disclosure of the record causes embarrassment or inconvenience to others.

Although the Public Records Act (PRA) recognizes that government transparency can be restricted, under very limited circumstances (RCW 42.56.070(1); RCW 42.56.360), any limitations or exemptions must be very narrowly construed (RCW 42.56.030) and any "other statute" exemptions under RCW 42.56.070(1) apply only to those exemptions explicitly identified in that "other statute."

The strict requirements of the PRA must not be ignored by our trial courts when determining whether any given record is exempt. Despite the strong language of the PRA, including that it is the controlling statute above all others, the Thurston County Superior Court enjoined the release of any and all

sex offender registration records and sentencing documents, without consideration or application of RCW 42.56.540, based solely on the opinions of other trial court judges across the state, sex offender defense attorneys and treatment provides; the very people who have a stake in keeping the information and documents secret. This is error and an abuse of discretion.

In similar cases, King County Superior Court Cause #13-2-41107-5 SEA, consolidated with Cause #14-2-05984-1 SEA, [1] Zink appealed the declaratory judgment and order of the trial court enjoining both juvenile and adult registration records and information as exempt pursuant to RCW 4.24.550. In that case, just as in this one, the trial court declared RCW 4.24.550 to be an "other statute" exemption and the exclusive means of obtaining sex offender registration records and information. This cause of action was stayed pending the decision of our Supreme Court concerning RCW 4.24.550 as an "other statute" exemption.

On April 7, 2016, our Supreme Court entered a decision mandating that RCW 4.24.550 is not an "other statute" exemption, exempting registration records or information. *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363

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[1] The parties listed as Plaintiffs in King County Cause #13-2-41107 SEA are "John Doe A, **a minor** by and through his legal guardians Richard Roe and Jane Roe; and John Doe B, a married man; as individuals and on behalf of others similarly situated."

The parties listed as Plaintiffs in King County Cause #14-2-05984-1 SEA are "John Doe C, **a minor** by and through his legal guardians Richard Roe C and Jane Roe C; and John Doe D, **a minor** by and through his legal guardians Richard Roe D and Jane Roe D, John Doe E and John Doe F; as individuals and on behalf of others similarly situated."

(2016) (*Doe v WSP*). The Supreme Court reversed the trial court's decision and remanded the case back for the permanent injunction to be lifted and the case dismissed. In rendering its decision, our Supreme Court made clear that our legislature did not want judges, any more than agencies, to be wielding broad and malleable exemptions *(Id.* ¶9-10). The Supreme Court's decision in *Doe v WSP* overturned all trial court decisions concerning sex offender registration records and information; including these consolidated causes of action currently before the court. As the Supreme Court has determined sex offender registration records and information is not exempt and must be released upon demand, this court should reverse the trial courts orders preventing the release of any and all registration records and remand back for the permanent, preliminary and temporary injunctions to be dismissed.

The only records still at issue in this appeal are the SSOSA evaluations previously determined to be sentencing documents by our Supreme Court and not exempt under the PRA. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012). Despite the decision and mandate of our Supreme Court, the Thurston County Superior Court enjoined the release of the requested SSOSA evaluations claiming that the Supreme Court did not consider all exemptions and therefore the decision in *Koenig* is not binding on any future action claiming a different exemption.

This was error and an abuse of the courts discretion. Our Supreme Court has already determined that the SSOSA evaluations are sentencing documents

used by a trial court in sentencing a sex offender and therefore available in the court record and in the prosecutor's office (RCW 9.94A.475 and .480). The trial court's decision otherwise is an erroneous interpretation of the Public Records Act (PRA), case law and must be reversed.

Further, Zink is requesting this court to review the trial court's decision to allow Plaintiffs to file litigation in complete secrecy such that even the court does not know the true identity of the party of interest, cannot verify the accuracy of the "factual" evidence of need or even identify whether a true party of interest exists. CR 17(a) demands that every action in the court must be prosecuted in the name of the real party in interest. An affidavit filed under an assumed identity does not identify the "real party in interest" and is of no legal value. Without knowing the identity of a party the trial court has no way to verify the accuracy of the complaint, whether the person filing litigation has any actual interest in the case, and if the party filing the action has no true interest in the cause of action, the court has no jurisdiction to rule or declare anything.

Open administration of justice is a vital constitutional safeguard that may not be overridden to seal or redact court records except in the most unusual of circumstances. *Hundtofte v. Encarnación,* 181 Wn.2d 1, 330 P.3d 168 (2014). Here Respondents did not show a serious and imminent threat to a compelling interest that outweigh the public's interest in the open administration of justice. Respondents have argued that each person has the right to a false

identity and as long as the court has no knowledge of the identity of the individual filing complaint, summons and declarations, the records are not sealed. This is not only contrary to well established court rules but it is also contrary to state statute Chapter 42.56 RCW (PRA) and a constitutional violation.

Zink, as a member of the general public and as an individual has right to know the party summoning her into court. Without that knowledge a trial court has no way to establish whether a party bringing action under RCW 42.56.540 has established they named in or the records specifically pertains to them. Simply saying that the person is named in the record is not good enough. The law requires that an affidavit be submitted as evidence. Furthermore, in a class action, the class representative must prove they actually are representative of the class they are assigned to represent. If the representative is totally unknown to the trial court, the court cannot assign that individual as class representative. Again, it is not enough for the party seeking to be a class representative to say they someone without verifiable evidence.

Although, as in Federal law, there are circumstances where a party is allowed to seal court records such that the parties name is unknown to the public, the party must still provide their name and apply court rules and established case law to determine whether the party has a right to secrecy in our judicial system. The entry of the Plaintiffs by the court clerk was error. The complaint and summons should have been rejected as deficient and

Respondents should have been required to file motion and argue proper sealing of the court records in order to hide their identity. The trial court has not only committed error of law, the trial courts' decision that the court did not need to know the identity of a litigant is a violation of our Washington State Constitution.

Finally, Zink requests this court to review the trial court's decision that a class action could be certified under the strongly worded PRA. RCW 42.56.540 specifically states that only a party named in the record or to whom the record pertains can initiate an action to enjoin the production of a public record. By allowing a class action to prevent the release of an entire group of records of a particular type regardless of whether the person named in the record has requested that record to be enjoined, the trial court is ignoring the language set forth by our legislature that the only person who can enjoin any particular record must be named in or a specific record must pertain to them. Trial courts interpret the law. By certifying a class of any and all persons named in a particular class of records, the trial court is creating a judicial exemption and violating the separation of powers doctrine.

For purposes of simplicity, Respondents will be referred to as "Does."

II. ORDERS TO BE REVIEWED

Order Granting Plaintiffs Motion for Permission to Proceed in Pseudonym entered January 23, 2015, in Thurston County Superior Court by the Honorable Carol Murphy (CP 682-684).

Order Granting Plaintiff's motion for Class Certification entered January 23, 2015, in Thurston County Superior Court by the Honorable Carol Murphy (CP 686-689).

Order Granting on Summary Judgment Granting Permanent Injunction of the records requested by Zink, entered on September 2, 2015 in Thurston County Superior Court by the Honorable Carol Murphy (CP 665-672).

III. ASSIGNMENTS OF ERROR

1. Use of Pseudonym[2]

a) The trial court erred in finding that Plaintiffs may be allowed to proceed under a pseudonym if the need for anonymity outweighs the public interest in access to their identities (FOF 1) (CP 92).

b) The trial court erred in finding that there is no dispute that the Plaintiffs exist and have an interest in this litigation when the court did not know and has no way to verify whether Plaintiffs actually exist and/or have interest in the litigation (FOF 1) (CP 92).

c) The trial court erred and abused its discretion in finding that Plaintiffs seek to exercise their right, under the Public Records Act (PRA) to enjoin release of personally identifying information which they contend is exempt from the PRA. Forcing Plaintiffs to disclose their identities to bring this action would eviscerate their ability to seek relief (FOF 2) (CP 92).

d) The trial court erred in finding that Plaintiffs have demonstrated a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed. Plaintiffs also allege that the records at issue contain sensitive mental health information and that their privacy would be violated by disclosure of this information to the general public (FOF 3) (CP 92).

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[2] Findings of Fact (FOF), Conclusions of Law (COL).

e) The trial court erred in finding that the public's right to access the proceedings will not be compromised apart from its ability to ascertain the names of the individual Plaintiffs. (FOF 4) (CP 92).

f) The trial court erred in finding that defendant will not be prejudiced if Plaintiffs proceed in pseudonym (FOF 5) (CP 92).

g) The trial court erred in finding that Plaintiffs' interest in proceeding anonymously outweighs the public interest in knowing their names (FOF 6) (CP 92).

h) The trial court erred in finding that permitting Plaintiffs to proceed in pseudonym is the least restrictive means to protect their interests. No other reasonable alternative exists (FOF 7) (CP 92).

i) The trial court erred and abused its discretion in ordering Plaintiffs be allowed to proceed in pseudonym throughout the pendency of this action (Order) (CP 92).

2. <u>Class Action Certification</u>

a) The trial court erred and abused its discretion when it certified a class of: "All individuals named in registration forms, a registration database, SSOSA evaluations or SSODA evaluation in the possession of Thurston County, and classified as sex offenders at risk Level I who are compliant with the conditions of registration or have been relieved of the duty to register" (CP 87).

b) The trial court erred in finding the proposed class is so numerous that joinder of all members is impracticable since, in this case, the class members number in the hundreds or perhaps thousands (FOF/COL 1) (CP 88).

c) The trial court erred in concluding that there are numerous questions of law and fact, including whether RCW 4.24.550 is an "other statute" excepting the production of compliant level I sex offender registration records from disclosure under the PRA and whether dissemination would cause significant harm or be in the public interest (FOF/COL 2)(CP 88).

d) The trial court erred in finding the individual Plaintiff's claims are typical of the claims of the proposed Class because their claims arise from the same event or court of conduct that gives rise to the claims of other members of the Class and the individual Plaintiff's claims are based on the same legal theory as Class claims (FOF/COL 3)(CP 88).

e) The trial court erred in concluding certification under CR 23(b)(2) is appropriate because defendants have acted or refused to act or perform a legal duty on grounds generally applicable to the class, and the final injunctive and declaratory relief will be appropriate with respect to the class as a whole (FOF/COL 5)(CP 88).

f) The trial court erred and abused its discretion when it certified a class of:

All individuals named in registration forms, a registration database, SSOSA evaluations or SSODA evaluation in the possession of Thurston County, and classified as sex offenders at risk Level I who are compliant with the conditions of registration or have been relieved of the duty to register."

(Order 6)(CP 89-90).

g) The trial court erred and abused its discretion when it certified a class in an action brought under the PRA, RCW 42.56.540 (Order 7)(CP 90).

h) The trial court erred and abused its discretion when it appointed unknown parties, known to the court only as John Doe P, John Doe Q, John Doe R and John Doe S as Class Representatives without verifying their true identity (Order 8)(CP 90).

3. <u>Permanent Injunction – Entered September 2, 2015</u>

a. The trial court erred in finding the evidence presented clearly showed hundreds of registered sex offenders were notified of Zink's request for criminal sex offender records (CP 656:21-22).

b. The trial court erred in finding the evidence presented clearly showed Thurston County was prepared to disclose records in response to the request in redacted form (CP 654:22-23).

c. The trial court erred in finding that Zink's absence from the July 17, 2015, hearing was a relevant fact affecting the outcome of the court's decision (CP 655:7-10).

d. The trial court erred in concluding RCW 4.24.550(1) authorizes the release of only certain information to the public under certain circumstances (CP 655:17-24).

e. The trial court erred in concluding the statutory scheme contemplated by RCW 4.24.550 fairly comprehensively governs the release of information to the public (CP 656:1-5).

f. The trial court erred in concluding *Koenig v. Thurston County*, 175 Wn.2d 837 (2012) only addressed the application of the investigative records exemption to a victim impact statement and a SSOSA evaluation and that exemption is not at issue here (CP 656:6-15).

g. The trial court erred in concluding RCW 4.24.550 specifically addresses the mandatory and discretionary release of the particular information contained in the records at issue in this case (CP 656:16-17).

h. The trial court erred in concluding that RCW 4.24.550 is within the class of statutes referenced in RCW 42.56.070(1) which exempt from disclosure specific information or records and that specificity does not create a conflict with the PRA (CP 656:17-19).

i. The trial court erred in finding evidence was needed to show the requirements for permissive disclosure allowed under RCW 4.24.550(1)(2) or (3) had been satisfied (CP 656:20-24).

j. The trial court erred in concluding SSOSA and SSODA evaluations are health care records as they contain health care information (CP 657:1-8).

k. The trial court erred in concluding our Supreme Court determined SSODA evaluations are psychological reports that include a treatment plan; not juvenile court documents. *State v. A.G. S.*, 182 Wn.2d 273, 278 (2014)(CP 657:8-11).

l. The trial court erred in concluding RCW 70.02.005 exempts SSOSA and SSODA evaluations (CP 657:11-17).

m. The trial court erred in concluding RCW 13.50.050(3) provides the basis to exempt SSODA evaluations from disclosure to the public (CP 657:18-25).

n. The trial court erred in concluding our Supreme Court determined in *State v. A.G. S.*, 182 Wn.2d 273, 278 (2014) a SSODA evaluation are not part of the official juvenile court file (CP 657:25-658:3).

o. The trial court erred in concluding RCW 4.24.550 determines whether portions of any particular SSODA evaluation could be released in compliance with subsection (5) (CP 658:3-11).

p. The trial court erred in finding Plaintiffs satisfied their burden to show that they are entitled to injunctive relief (CP 658:12).

q. The trial court erred in finding that the requested records pertain to parties completely unknown to the trial court based on unsigned and unverifiable declarations of unknown parties (CP 658:12-15).

r. The trial court erred in concluding RCW 4.24.550, 13.50 and 70.02 are "other statutes" which exempt or prohibit disclosure of specific information or records under RCW 42.56.070(1) and therefore statutory exemptions applied to all of the requested records (CP 658:15-17).

s. The trial court erred in concluding the record establishes that un-redacted disclosure would not be in the public interest and would substantially and irreparably harm the class members (CP 658:17-19).

t. The trial court erred in finding unsigned declarations submitted by Plaintiffs or "others" credibly attest to the substantial and irreparable harm to class members if the requested documents were disclosed without redactions (CP 658:20-22).

u. The trial court erred in concluding the public's interest, as indicated by the legislature's findings that support RCW 4.24.550, 13.50 and 70.02 dictate that there is a balance between disclosure and proper redaction (CP 658:22-25).

v. The trial court erred and abused its discretion in ordering permanent injunction, enjoining Thurston County from releasing un-redacted records

in response to Zink's request, consistent with the findings and conclusions established by the trial court (CP 659:1-4).

w. The trial court erred and abused its discretion in enjoining release of the requested records without determining whether redacted records could be released pursuant to RCW 4.24.550, 13.50 and 70.02 (CP 659:4-7).

x. The trial court erred and abused its discretion in enjoining public records without first conducting an in-camera review of the records being enjoined (S) 659:5-7).

IV. STATEMENT OF THE CASE

1. History of Requests for Access to Sex Offender Records

On October 4, 2014, Zink sent a public record request to Thurston County Public Records Officer requesting copies of: 1) all SSOSA evaluations; 2) all SSODA evaluations; 3) victim impact statements related to those convicted of sex offenses; 4) registration form of all sex offenders registered in Thurston County; and 5) a List and/or database of all registered sex offenders registered in Thurston County (CP 144).

On October 7, 2014, Thurston County Public Records Coordinator responded stating that the request had been sent to the Thurston County Sheriff's office and to the Thurston County Prosecuting Attorney's Office for fulfillment. (CP 146).

On October 10, 2014, Thurston County Prosecuting Attorney's Office (TCPAO) Paralegal, Nancy Jones-Hegg, responded delaying Zink's request to their department until October 24, 2014 due to the need to research and review the request (CP 146).

On this same day, Thurston County Sheriff's Office (TCSO) Records Officer, Judy Leeson contacted Ms. Zink and requested clarification of Zink's request to their department (CP 151).

On October 12, 2015, Zink responded to TCSO office requesting clarification of her request (CP 153-155) explaining exactly what records were being requested and that she would like to receive the records in electronic format.

On October 23, 2014, TCPAO again delayed Zink's request for an additional week, stating they were still researching and reviewing her request and they would respond by October 31, 2014 (CP 157).

On October 31, 2014, Zink received two responses from Leeson on behalf of both the TCSO and TCPAO. The first response requested further clarification of what records were being requested and explaining to Zink that Thurston County attorneys have advised that they will provide third party notification to all of the registered sex offenders in their county (CP 159). The second response, attached to the first response, was an undated e-mail explaining that much of the requested information was exempt and confidential and should be protected and thanking Zink for her clarification (CP 162).

On November 10, 2014, TCSO responded again to Zink's request, again thanking her clarification and stating that they anticipated having the first installment of her request ready by March 1, 2015 (CP 127). After receiving

TCSO e-mail, Ms. Zink responded objecting to any further clarification of her request as it was clear what records were being requested and to the lengthy delay of approximately five months to respond with a single record responsive to her request (CP 171).

On November 14, 2014, Ms. Leeson responded stating that Thurston County was proving third party notice for the delay of five months to respond to her request and directing Ms. Zink to the on-line registry for a list of all sex offenders registered in Thurston County (CP 175).

That same day, Ms. Zink responded stating that the web site was missing upwards of 80% of the sex offenders registered in Thurston County and objecting to notification of third parties as the County had no legitimate reason or duty to notify convicted criminals under RCW 42.56.240(8), tell them someone was asking for their criminal records and provide them with the requesters contact information. Ms. Zink requested to know what statue, rule or agreement allowed Thurston County to notify third parties (CP 180).

On December 31, 2014, Ms. Zink made a second public records request to Thurston County for electronic copies of all Sentencing and Judgment documents held anywhere in Thurston County as well as all copies of registration forms of all Level I non-compliant and Level I transient sex offenders as of the date of her request (CP 185).

On January 7, 2015, TCSO responded stating that the first installment of responsive documents should be ready on January 30, 2015 (CP 188).

On January 29, 2015, both the TCSO (CP 191) and the TCPAO (193) mailed a CD containing the first installment of the requested judgment and sentencing documents via US postal service to Ms. Zink in response to her request.

Ms. Zink has received a total of 5 discs with responsive records from Thurston County in response to her request of December 31, 2014 (CP 195-198).

On March 30, 2015, Ms. Zink received another delay from Thurston County concerning her first request, delaying the entire request until September 25, 2015 (CP 100).

2. Judicial History

On January 14, 2015, Plaintiffs filed a class action complaint (CP 7-20) for declaratory relief summoning Zink into this cause of action (CP 5-6). Does also filed a motion to proceed in pseudonym (CP 49-59), a motion for class certification (CP 21-34) and a motion for preliminary injunction (CP 35-48) to be heard on January 23, 2015. Thurston County (TC) responded to all three motions on January 21, 2015 (CP 62-71). TC did not object to either the use of pseudonym or class action certification (RP (January 23, 2015) 8:23-9:6; 13:11-14-5). On January 23, 2015, nine days after this cause of action was initiated, Zink e-mailed her pro se notice (CP 102-103) and answer to

complaint (CP 94-101) to the parties and send the originals via US mail to the court (RP (January 23, 2015) 5:2-17).

At the hearing on this same date, Does' counsel explained to the court that Zink had e-mailed court documents that morning that were not filed in the court. The trial court took exception to this prior to proceeding with the hearings (*Id.* 5:20-8:6) stating that the Court had reviewed everything and saw no need to review anything further (*Id.* 6:1-6).

The first motion heard was the motion for permission to proceed in pseudonym (*Id.* 8:23-16:25). Does argued that the records were not sealed since "[i]n this case, the Court would be viewing the same information that the public would be viewing, and therefore Ishikawa is not triggered" (*Id.* 9:22-25) The trial court questioned this reasoning stating:

> I found a case, North American Council on Adoptable Children v. DSHS, 108 Wn.2d 433. In that case, the Court indicated that while a plaintiff may proceed under a pseudonym to protect a privacy interest, a plaintiff is not thereby relieved of the requirement that the complaint allege a grievance on the part of a real and specific individual. That case cited a federal case, which, as you noted and as the Court found, there are many more federal cases than state cases on this issue.

(*Id.* 11:11-20). Does responded explaining how the Ishikawa Factors would apply if they were applied and Zink had adequate time to respond to the motion stating:

> If you balance the interests, I believe the harm that could befall the Does should their identities become known clearly outweighs the public interest in sort of open courts in that the public's access to this litigation is not in any way compromised except as to identification of the Does. This case is a case involving purely legal issues, so the Court's interest in the outcome of the case does not ride on these Does.

(*Id.* 12:10-18). TC stated that the Ishikawa Factors did not apply stating, "I think the ACLU has been careful to avoid having the Court be put in that situation" (*Id.* 13:24-14:1). The trial court agreed, reasoning that:

> So on that point, it appears to me, from looking at the case law, that the concern in the one case that I could find in a Washington case was that specific plaintiffs be identified and then if there was protection needed that you could seal or do whatever, which definitely would invoke the Ishikawa factors. <u>But in this case it doesn't seem like there is dispute that even though we don't have the identities of the plaintiffs in the record, that folks like the plaintiffs exist and they are real people, and it's not hard without specific names for the parties to know that specific people like that exist that are affected</u>.

(*Id.* 14:6-18). TC agreed stating:

> I can let the Court know that my understanding is there are -- just on the Level I sex offender portion of this -- and obviously the requests bring in different numbers in terms of population for that, but we're probably talking over 600 current offenders that – I can tell the Court there are real people that are, as the Court said, directly affected by this and they do exist.

(*Id.* 14:19-15:2). Based on the arguments presented and the trial court's review of case law, the trial court determined that: 1) the parties had come to an agreement; 2) it is pure speculation as to impact or whether there is an actual controversy because the plaintiff are not identified in the record; 3) the record clearly shows that there are individuals in each of the groups that are identified by pseudonyms and it is not speculative and would not require named individuals to seal their names in order to address the legal issues raised by Plaintiffs and agreed to by the County (*Id.* 15:15-16:10). The trial court found that "**there is no reason to put their actual identities in the court record, the Court is not sealing any part of the court record, and therefore it is not necessary to go through the Ishikawa factors** (*Id.* 16:14-18)(emphasis added); ordering the Does be allowed to proceed in pseudonym without the Court knowing their true identity or sealing the court's records under GR 15 or use of the Ishikawa Factors (*Id.* 16:14-18; CP 91-83).

Without any further argument, the court certified a class of Level I sex offenders stating:

> With regard to class certification, that motion again is unopposed, and the Court agrees with the plaintiffs that class certification is appropriate here. The plaintiffs have identified a class. That class is not opposed by the County, and Ms. Zink had an opportunity to be here or to oppose that motion through pleadings and she has not done so. So the Court is granting the motion for class certification.

(RP (January 23, 2015) 17:1-8; CP 87-90). The trial court defined the class as:

> All individuals named in registration forms, a registration database, SSOSA evaluations or SSODA evaluations in the possession of Thurston County classified as risk Level I who are compliant with the conditions of registration or have been relieved to the duty to register.

(CP 87-90). After hearing oral argument from both parties, the trial court ordered TC to not disclose or disseminate any records or information pertaining to level I sex offenders compliant with or relieve of the duty to register, except victim impact statements to Ms. Donna Zink or any comparable Public Records Act request by her unless by further Court order. CP 85).

On June 19, 2015, Does motion the court for permanent injunction to permanently enjoin all records associated with Zink's request pertaining to Level I compliant sex offenders (CP 115-135). Zink filed motion for summary judgment dismissal (CP 136-213; 214-239; 214-239; 240-324). On June 30, 2015, TC responded to both motion (CP 358-369). On July 6, 2015, both Does and Zink responded to the motions for summary judgment (CP 370-385; 552-557) and replies were submitted on July 13, 2015 by both parties (CP 578-603; 604-639; 640-651). Zink also filed a waiver of oral argument pursuant to the Supreme Court's decision in *O'Neill v. City of Shoreline*, 170 Wn.2d 138 ¶25, 240 P.3d 1149 (2010).

At the hearing held on July 17, 2015, the trial court stated that although she had reviewed Zink's pleadings the Court was obviously not going to

consider any argument of Ms. Zink (RP (July 17, 2015) 51:2-16). After hearing oral arguments from Does and TC, the trial court stated that a ruling would be issued the following week (RP (July 17, 2015) 77:10-19).

On August 31, 2015, the Honorable Carol Murphy issued an order (CP 653-659) permanently enjoining the records requested by Zink and pursuant to RCW 4.24.550, 70.02 and 13.5 (CP 658). The trial courts findings, conclusions and order did not mention or use RCW 42.56.540 to enjoin the records as required by the Public Records Act (PRA).

On September 4, 2015, Zink timely filed this appeal (CP 661-689).

3. History on Review

After this appeal was filed, a motion to stay was submitted on December 31, 2015, while our Supreme Court made determination concerning RCW 4.24.550 and whether it was an "other statute" exemption controlling the release of sex offender records by our penal system. This case was stayed on January 25, 2016. On April 7, 2016, our Supreme Court made final determination in *Doe v. WSP, 185 Wn.2d 363 (2016)*. Our Supreme Court determined RCW 4.24.550 was not an exemption under the PRA. On June 17, 2016, this Court file a Motion to Dismiss for Fail to file and issued sanctions against Zink. On June 24, 2016, Zink requested on extension on time to file opening briefing which was granted on June 27, 2016.

V. ISSUES PRESENTED FOR REVIEW

1. Use of Pseudonym

a. Is use of pseudonym sealing of court records whether the complaint and summons were redacted prior to filing in the Superior Court (CR 4(b)(1)(i), 10(a)(1) and 17(a); GR 15 and 31(c)(4))?

b. Does allowing litigants initiating action to file court documents under a false name violation the Washington State Constitution?

c. Can Plaintiffs to an action file complaint and summons without identifying the true party of interest, using a false identity?

d. Can Plaintiffs to an action file all pleadings, memorandum and other court documents using a false identity such that the identity of Plaintiffs is not known to the court?

e. Is use of pseudonym in place of the true name of the party sealing of court records and subject to the mandatory requirements of General Rule (GR) 15 and the *Ishikawa Factors*?

f. Can a trial court make determination pursuant to RCW 42.56.540 that a party is actually named in or the record pertains to that person without being able to verify the true identity of the party?

g. Can a trial court determine whether an unknown party has similar questions of law or fact common to the claims of the class (CR 23(a)(2))?

h. Can a trial court determine whether an unknown party's claims are typical of the claims the party represents without verifiable evidence of the identity of the representative party (CR 23(a)(3))?

i. Can a trial court determined an unknown party will fairly and adequately protect the interests of the class (CR 23(a)(4))?

j. Can a trial court allow a party total anonymity in our judicial system because knowing their true identity would disclose mental health information and violate their privacy during litigation?

k. Does the evidence provided by the Plaintiffs support the facts and conclusion of the trial court that use of pseudonym to obscure the identity of Plaintiffs was necessary and the only option available?

l. Does Plaintiffs right to privacy in litigation outweigh the public right to know?

m. Does allowing a litigant to initiate action under a false name prejudice the party summoned into an action?

n. Did the trial court err in relying on other trial court decisions to determine whether to allow Respondent to file in pseudonym while ignoring decision of our Supreme Court?

2. Class Action Certification

See also use of pseudonym issue concerning class certification above.

a. Can a trial court certifying a class of person under the strict requirements of RCW 42.56.540 in order to exempt an entire body of records under the Public Records Act (PRA) (RCW 42.56.540)?

b. Do Plaintiffs meet the requirements for certification of a class pursuant to CR 23?

c. Can a class be certified if the class representatives are unknown to the court?

3. Permanent Injunctions

a. Did the trial court err and abuse its discretion when the court did not use the mandatory requirements of RCW 42.56.540 to enjoin the requested records?

b. Did the trial court err in enjoining the requested records for a class of Level I compliant sex offenders under RCW 4.24.550, 70.02.250 and 13.50.050?

c. Did Plaintiffs' meet their burden of proof that the requested records are exempt and that they will suffer any actual substantial harm if the public has access to the records?

d. Did the trial court err in finding that access to the requested records by the public would irreparably harm the sex offenders?

e. Did the trial court err in finding a person not named in a specific record or to whom the record specifically pertains can enjoin the records of another person under the strict mandates of RCW 42.56.540?

f. Did the trial court err in finding that the decision in *Koenig 2012,* by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?

g. Did the trial court err in not apply the mandatory test for injunction of public records under RCW 42.56.540?

VI. ARGUMENT

1. Affect of Decision of Our Supreme Court in *Doe v. WSP* on This Cause of Action

Our Supreme Court recently opinioned RCW 4.24.550 is not an "other statute" exemption and does not exempt the release of both juvenile and adult registration records and information *Doe v. WSP,* 185 Wn.2d 363 (2016). Many of the documents enjoined by the trial court were registration records or records containing registration information. This cause of action was put on stay while our Supreme Court made determination concerning RCW 4.24.550. That determination has now been made and the decisions of the Supreme Court is binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

> Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). As the decision concerning RCW 4.24.550 has been made and it has been determined that registration records and records containing registration information are not exempt and must be release upon request, Zink does not offer any further argument concerning the injunction of those specific records since that would be a waste of the court time. The Zinks request this court to reverse the Thurston County Superior Court's decision and order, enjoining any and all registration records and records containing registration information as appealed, and instruct the trial court to dismiss the declaratory injunction against release of these specific records.

Further, the trial court relying solely on unsigned and unsworn statements did not apply the test for injunction of public records pursuant to the strict mandates set out in RCW 42.56.540. Although trial courts are given great latitude concerning the conduct of the Court, our Court derive their authority to act and make judicial decision under Court Rules (CR), state statutes, legal authority, and our constitution. All men are created equal and equity in our judicial system means all litigants are treated in equity with our rules, laws, and constitution being applied the same in all cases.

2. Use of Pseudonym and Court Records

A trial court's decision to seal records is reviewed for abuse of discretion. *Dreiling v. Jain*, 151 Wn.2d 900, 907, 93 P.3d 861 (2004). However, the

proper standard governing the sealing of court records is reviewed de novo. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). The question before the court is whether the records needed to be properly sealed. If the records required sealing, the trial court reached its decision by applying an improper legal standard and the proper procedure is to remand back to the trial court to apply the correct rule. *Bennett v. Bundy,* 176 Wn.2d 30, ¶9, 291 P.3d 886 (2013).

The standard of review of the interpretation of court rules and state statutes is reviewed de novo. *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, ¶11 359 P.3d 753 (2015). The same principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). Court rules and State statutes must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

The rules associated with sealing of court records is found at GR 15. The definition of a court record is found at GR 31, CR 4, 10 and 17. Each of these court rules contain language stating that the party initiating legal action against another person must provide their legal name and be identified as the

true party of interest and that party must be identified in the complaint and summons as well as the declarations, affidavits and other court records.

In this cause of action, the trial court has erroneously interpreted the rules and statutes to allow a party to file in complete anonymity, to proceed in pseudonym, such that even the court does not know the true identity of the party initiating action in the court. Does were allowed to file redacted summons, complaint and declarations. All of these documents are considered "court records" and require the true identity of the litigant bringing action to provide their true names. Both CR 4(b)(l)(i) and CR 10(a) requires a summons and complaint contain the names of the parties to an action: plaintiff and defendant. *Lafranchi v. Lim*, 146 Wn. App. 376, ¶20, 190 P.3d 97 (Div. I, 2008).

RCW 42.56.540 requires that an affidavit be submitted to the court in order for the party to prove they have right to bring action in the court to enjoin the release of specific records they are named in or pertain to them. A declaration or affidavit of an unknown party is not sufficient evidence of verifiable fact upon which a court can determine whether the party is named in the record or the record pertains to that party. It is not enough to say it is so without the ability to verify the facts provided. Our courts don't operate on supposition and unverifiable evidence and by doing so, the trial court abused its discretion and Zink was prejudiced. Furthermore, the trial court violated both the State and Federal constitutions prohibiting secrecy in our judicial

system without applying a test to determine whether secrecy in our courts outweighed the public interest as required by court rules.

Likewise, in order to certify a class of persons to be represented by any particular litigant in a class action, the court has need to know the true identity of the party seeking to be class representative. Specifically, the trial court, based on the declaration or affidavit on file in the court must determine whether the party initiating action has shown that questions of law or fact are common to the class; 2) the claims or defenses of the representative party(ies) are typical of the claims or defenses of the class; and 3) the representative party(ies) will fairly and adequately protect the interests of the class. CR 23(a)(2-4). Again, it is not enough for the courts to simply state a thing is true. The courts findings and conclusions must be based on verifiable evidence. Here the only evidence submitted is the declaration or affidavit of the party seeking to enjoin the records while representing a class of other similarly situated without the court knowing the true identity of that class representative. Again, the trial court must be able to verify the evidence submitted and the failure to do so is error and an abuse of the trial courts discretion.

Does argued that allowing Plaintiffs to an actions to hide their identity and proceed without anyone knowing their true names or identities is not sealing court records since the court would be viewing the same record that the public has access to (RP (January 23, 2015) 9:14-25) and therefore

Ishikawa is not triggered (Id. 9:24-25). Despite the clear and unambiguous language found in GR 15 and 31, CR 4(b)(1)(i), 10(a)(1) and 17(a) and the strongly worded mandate of our Supreme Court in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982) as well as the case cited by the trial court, *North American Council on Adoptable Children v. DSHS*, 108 Wn.2d 433, (RP (January 23, 2015) 11:11-12) and without conducting the mandatory test as set forth in *Ishikawa*, the trial court agreed stating:

> [T]here is no reason to put their actual identities in the court record, the Court is not sealing any part of the court record, and therefore it is not necessary to go through the Ishikawa factors.

(RP (January 23, 2015) 16:14-18) The trial court did not conduct the mandatory test under GR 15 and the *Ishikawa Factors* in the sealing of the court records. This is clearly error and an abuse of the trial courts discretion *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005).

Clearly the summons, complaint, declarations, affidavits, memorandum and all other court records filed in court in conjunction with this cause of action are court records used by the trial court to make determination concerning whether to enjoin public records through class certification and are sealed. The key to distinguishing information to which article I, section 10 applies is dependent on whether the records are used by the trial court in its decision-making process. *Bennet v. Bundy,* 176 Wn.2d 303, ¶15, 291 P.3d 886 (2013) Simply put, while information that does not become part of the judicial

process is not governed by the open courts provision in our constitution, in this case the records are used by the court in the summons, complaint, declarations, affidavits, pleadings and in all other records submitted to the court.

The proper application of court rules and the Washington Constitution, Art 1 ¶10 required the court to conduct a GR 15 test and apply the Ishikawa Factors at the time of the sealing. The trial court did not do so and applied the wrong legal standard. The issue of sealing must be remanded for the trial court to apply the correct standard. Where a trial court has based its decision on an improper rule or standard, the proper remedy is to remand to the trial court to apply the correct rule or standard. *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004).

3. Class Action Certification Under RCW 42.56.540 Is Precluded

The trial court's findings, conclusions, and orders do not address the issue of whether the legislative scheme outlined under RCW 42.56.540 allows a court to certify a class of persons and thereby exempt all records pertaining to that class from production to a requester. This is error and an abuse of the Courts discretion.

The PRA controls in all questions of law.[3] The correct standard of review requires an analysis of RCW 42.56.540 to determine whether a person can form a Class and motion the court for exemption of an entire set of public records (blanket exemption of public records through class action), in this case SSOSA evaluations under the strict requirements of RCW 42.56.540. RCW 42.56.540 states:

> The examination of any specific public record may be enjoined if, upon **motion and affidavit by** an agency or its representative or **a person who is named in the record or to whom the record specifically pertains**, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

(*Id.*)(emphasis added). Assuming, for the sake of this legal argument, Level I sex offenders who are named in at least one of the requested records, respondents are not named in all of the records requested. RCW 42.56.540 is specific to a "**person** who is **named in the record** or to whom **the record specifically pertains**." RCW 42.56.540 specifically requires the person

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[3] In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.030.

named in the record or to whom the record pertains **must file a motion and affidavit** to the court. Class action certification would make this requirement superfluous, creating a judicially created exemption; a violation of the separation of powers doctrine.

> [I]n PAWS II, we said that it did not make sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to … judges the [power to imply] extremely broad and protean exemptions … .125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an "other statute" exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Doe v. WSP, 185 Wn.2d 363, ¶10 (2016). By certifying a class of persons to enjoin any and all records of a specific classification and type, the trial court is creating an exemption where an exemption does not exist. Under the plain meaning of the legislative intent in RCW 42.56.540, the trial court erred in not identifying which records at issue in this cause of action contain the name(s) of the parties filing complaint, summons and affidavit. Instead the trial court determined that it has the authority to create a judicial exemption through class certification; exempting all Level I, II and III sex offenders SSOSA evaluation under the guise of a class action. This is an absurd reading of the

plain meaning of RCW 42.56.540. The trial court abused its discretion when it determined and ordered that anonymous, completely unknown persons could enjoin the records of other persons under the strict requirements of RCW 42.56.540 and the trial court's order certifying a class of sex offenders whose identities are protected from disclosure to the public must be reversed.

4. Mandatory Requirements of the Public Records Act

The Washington Public Records Act is a powerful tool of the people to maintain control of all branches and agencies of government[4] through access to public records.[5] In order for the people to maintain control over government conduct, production of public records must be liberally construed and exemptions to production must be narrowly construed.[6] Our broad PRA exists to ensure that the public maintains control over their government, and the Courts will not deny the citizenry access to a whole class of possibly important government information.[7]

Public agencies are required to release all records created, owned, used, and/or retained by their respective agencies as expeditiously as possible.[8]

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4 RCW 42.56.010(1); RCW 42.56.070; King County v. Sheehan, 114 Wn. App. 325 57 P.3d 301(Div. I, 2002); *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 527, 199 P.3d 393 (2009).

5 RCW 42.56.010(3)(4); O'Neill v. City of Shoreline, 170 Wn.2d 138, ¶14-15, 240 P.3d 1149 (2010).

6 RCW 42.56.030; *Livingston v. Cedeno*, 164 Wn.2d 46, ¶6, 186 P.3d 1055 (2008).

7 *O'Neill v. City of Shoreline*, 170 Wn.2d 138, ¶15, 240 P.3d 1149 (2010).

8 RCW 42.56.100.

Public agencies are not to distinguish amongst requesters.[9] Public agencies cannot exempt records from production based on the identity of the requester.[10] Public agencies in responding to a request for records cannot inquire as to the motivation of the requester.[11]

All public records created, owned, used and/or retained by public agencies are public and must be disclosed.[12] All non-exempt public records must be produced.[13] All exemptions claimed by public agencies resulting in non-production of public records, in whole or in part, must be justified, in writing, identifying the document withheld, the exemption allowing the withholding of the record, and an explanation of how that exemption applies to the withheld document or portion of the document.[14]

A claimed exemption is invalid if it does not in fact cover the requested document.[15] Agencies are under no obligation to claim exemption.[16] Conflict between the Washington State Public Records Act and any other statute, rule or law shall be decided under the statutory requirements of the Public Records

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9 Zink v. City of Mesa, 140 Wn. App. 328, ¶24, 166 P.3d 738 (Div. III, 2007).

[10] RCW 42.56.050

[11] RCW 42.56.080. *City of Lakewood v. Koenig*, 160 Wn. App. 883, ¶16, 250 P.3d 113 (Div. II, 2011)

[12] *Sanders v. State*, 169 Wn.2d 827, ¶3, 240 P.3d 120 (2010).

[13] *Sanders v. State*, 169 Wn.2d 827, ¶4, 240 P.3d 120 (2010).

[14] RCW 42.56.210(3); RCW 42.56.520.

[15] *Sanders v. State*, 169 Wn.2d 827, ¶5, 240 P.3d 120 (2010).

[16] *Seattle Times v. Serko*, 170 Wn.2d 581, ¶29, 243 P.3d 919 (2010).

Act.[17] Courts are to take into account that examination of public records is in the public interest, even though such examination my cause embarrassment to others.[18] Agencies are not to make privacy interest determinations on the basis that it identifies a person or a particular class of persons.

5. Statutory Requirement of the PRA Which Must Be Utilized By A Trial Court In Order to Enjoin Public Records

Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3); PAWS II, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). The Court of Appeals stands in the same position as the trial court as if the trial court had never happened. Three statutes contained within the PRA deal with enjoining the "public's records and third parties: RCW 42.56.210(2), RCW 42.56.520 and RCW 42.56.540. It becomes clear the intent of the legislature in enacting these three separate, yet connected statutes, when read together because they complement each other.

RCW 42.56.520 clearly states "[a]dditional time required to respond to a request may be based upon the **need to notify third parties**" (emphasis added). RCW 42.56.540 states that "an agency **has the option** of notifying persons named in the record or to whom a record specifically pertains" (emphasis added) unless required by law. Finally, RCW 42.56.210(2) clearly states

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[17] RCW 42.56.030.

[18] RCW 42.56.550(3). *Koenig v. Thurston County*, 175 Wn.2d 837, ¶9, 287 P.3d 523 (2012); *King County v. Sheehan*, 114 Wn. App. 325, 336, 57 P.3d 307 (Div I, 2002).

inspection or copying of any specific exempt record(s) may be permitted if the superior court in the county in which the record is maintained finds, **after a hearing with notice thereof to every person in interest and the agency**, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function." If the Court does not read together these subsections in this manner, then the need to notify in section .520 would be rendered superfluous by the agencies "option" to notify under section .540. Furthermore, the language of .210(2), giving a trial court the right to allow access to exempt records would be meaningless, a result we avoid when interpreting a statute. PAWS II at 260

> We will not interpret statutes in a manner that renders portions of the statute superfluous.

Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 829 P.2d 746 (1992), cert denied, 506 U.S. 1079 (1993)).

Under the PRA, the "public's" records are to be made promptly available upon request and all denials must be accompanied by an exemption log clearly outlining what records were being withheld, the number of records withheld, the author, as well as the claimed exemption and a brief explanation of how the claimed exemption applies to the requested record. Our legislature states three time that this is to be the case in all denials of public records. RCW 42.56.050, 42.56.070(1), and 42.56.210(3).

Specifically, at issue in this cause of action is the decision of the trial court to not apply the mandatory requirement of RCW 42.56.540 in making its decision and ordering injunction of the requested records. RCW 42.56.540 controls all injunctions of public records (see also RCW 42.56.030). The trial court's decision is error and an abuse of discretion.

6. Sentencing Documents Are Not Health Related Records and RCW 70.02 Does Not Apply and Can't Be Used As An Exemption

Respondents argued to the court that Special Sex Offender Alternative Sentencing (SSOSA) and Special Sex Offender Disposition Alternative (SSODA) evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their "patient."

The SSOSA and SSODA evaluation and proposed treatment plan submitted to a trial court by the State for a decision on sentencing of a

convicted sex offender, whether a juvenile or an adult, is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

7. Criminal History Record Information – Conviction Records Must Be Released to the General Public under the Washington State Criminal Records Privacy Act

Records of criminal conviction must be available to the public under the Washington State Criminal Records Privacy Act. Conviction records may be disseminated without restriction. RCW 10.97.050(1). "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject. RCW 10.97.030(3). "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release. RCW 10.97.030(1).

All records requested by Zink are records of conviction or sentencing which are required to be available for public inspection.

8. The Sentencing Reform Act of 1981 Mandates Release of Sentencing and Plea Agreement Information to Members of the General Public

Under the Sentencing Reform Act of 1981 our legislature mandated that:

> Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes shall be made and retained as public records if the felony crime involves:
>
> (2) Any most serious offense as defined in this chapter..

RCW 9.94A.475(2). Does fall within the definition of RCW 4.75.030(32) as convicted sex offenders. Furthermore, SSODA evaluations fall within the scope of the requirements of RCW 9.94A (see RCW 9.94A.670(14).

Pursuant to Chapter 9.94A RCW, our legislature requires law enforcement agencies to maintain and disclose any and all recommended sentencing agreements or plea agreements and the sentences of convicted sex offenders must be maintained and accessible to the public. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012). A prosecutor often factors a SSOSA evaluation in negotiations with the defendants (*Id.* ¶25, *fn.* 6) and an evaluation is mandatory in order for a convicted sex offender to receive an alternative sentence (RCW 9.94A.670(3)). An alternative sentence allows a convicted sex offender to receive substantially reduced prison time in

exchange for community supervision with mandatory treatment RCW 9.94A.670(4)-(5)(*Koenig*. ¶26).

Furthermore, SSOSA and SSODA evaluations are criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject RCW 10.97.030(3). The evaluations are used by the trial court to recommend a SSOSA sentence or discourage a court from imposing the sentencing alternative. The evaluation is a consequence directly incidental to a conviction and is a conviction record as defined by RCW 10.97.030 (see above).

Clearly, by legislative mandates, SSOSA and SSODA evaluation are in the court file and must also be maintained in the prosecutor's office. Does failed to meet their burden of proof that the requested evaluations are exempt , not in the public interest and that harm will occur (RCW 42.56.540. The trial courts order enjoining the records must be reversed.

9. Supreme Court Decision in *State v. A.G.S.* 182 Wn.2d 273, 278, 340 P.3d 830 (2014) Is Not Applicable to This Cause of Action

In enjoining the SSODA evaluation the trial court used the Supreme Courts decision in *State v. A.G.S.*, 182 Wn.2d 273, ¶2, 340 P.3d 830 (2014). Our Supreme Court noted that in the sentencing of AGS, the court ordered a Special Sex Offender Disposition Alternative (SSODA) evaluation at the behest of the State (*Id.* ¶2). At the same time AGS had a separate SSODA evaluation performed by an independent psychologist (¶2).

> The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. **The evaluator shall be selected by the party making the motion**. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

RCW 13.40.162(2)(c)(emphasis added). The victim received a copy of the State's SSOSA evaluation from the Prosecuting Attorney's Office. The parents of the victim requested a copy of the SSODA evaluation ordered and paid for by AGS. The question put before the Supreme Court was in which juvenile file should the SSODA evaluation, bought and paid for by AGS, be placed.

> Should a juvenile offender's SSODA evaluation be filed in the official juvenile court file and thus be available to the public?

(¶7). This is abundantly clear since the Court noted the court ordered SSODA evaluation had already been released to the parents. The AGS Court was solely discussing the SSOSA evaluation performed by a psychologist of AGS's choosing and provided independently by AGS to the trial court for consideration during sentencing. The AGS Court clearly identified the difference between the two documents by continually noting that there were two different and separate SSODA evaluations performed.

> The statute does not contain any specific provisions regarding who can conduct the assessment, but in this case, both SSODA evaluations were performed by independent psychologists.

State v. A.G.S., 182 Wn.2d 273, ¶9, 340 P.3d 830 (2014). Our Supreme Court determined that the SSODA evaluation ordered by AGS was not part of the

official court file and was therefore exempt. This is not dispositive of this case. Zink is asking for the SSODA evaluation maintained by the trial court in the juvenile's court file and the prosecuting attorney's office which must be available for public inspection and copying in the Prosecuting Attorney's Office as well as in the trial court. (RCW 9.94A.475 and .480).[19]

Although our Supreme Court has emphasized the importance of confidentiality of juvenile offender files in the possession of public agencies holding "[a]ll records related to a juvenile offender must be kept confidential unless they are part of the official juvenile court file or meet another statutory exemption (State v. A.G.S., 833, 340 P.3d 830 (2014)). A Juvenile Court file must be open and available to the public for inspection and copying.

> "The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection…

CR 13.50.050(2). Court ordered SSODA evaluations paid for by the people and used to sentence a juvenile offender are found in the court file as sentencing documents and must be available for public inspection unless the records are sealed. All juvenile records requested by Ms. Zink are found in the "juvenile court file" as required by RCW 9.94A.480 and must be open to

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[19] If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. RCW 9.94A.670(14).

public inspection. RCW 13.50.050(2). The trial court's decision to enjoin the SSODA evaluation was error and an abuse of discretion and must be reversed.

VII. COSTS

The Zink's request this Court to award them fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, Zink respectfully request this Court to award them fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

VIII. PUBLICATION

Zink respectfully requests this court to publish the decisions made in this cause of action. Whether use of pseudonym is a sealing of court records regulated by GR 15 and our Supreme Court's decision in *Seattle Times v. Ishikawa*, whether an injunction preventing release of public records falls under the prevue of RCW 7.40 or 42.56.540, and whether or not Class Action of individuals can be certified to prevent the release of public records under the strict requirements of the PRA, specifically RCW 42.56.540 are questions of paramount importance to the public as they pertain to access to public records by the public in a reasonable amount of time. Requesters need to know what is at stake when RCW 42.56.540 is invoked in response to a request for access to public records under the PRA. Is it reasonable for a

request to be delayed if an agency has no exemption yet notifies third parties, delaying release and initiating legal action through proxy using class action and false identities? These issues are in need of immediate resolution by our upper courts.

IX. CONCLUSION

All records enjoined under RCW 4.24.550 must be released pursuant to the decision in *Doe v. WSP*, 185 Wn.2d 363 (2016). The Zinks respectfully request this court to issue a mandate reversing the decision of the trial court to enjoin the registration records and information. Further the Zinks respectfully request this court to once again determine that the SSOSA, as well as SSODA, evaluations are sentencing documents, used by the court to sentence sex offenders to alternative sentencing and must be maintained in both the court and the prosecutor's office for public inspection or remand back to the trial court for proper application of RCW 42.56.540.

The strongly worded mandate of the PRA does not allow for class action certification. Pursuant to the clear and unambiguous language of RCW 42.56.540, the only controlling legal authority allowing a trial court to enjoin public records from release in a third party PRA action, demands that the person seeking to enjoin a record or records must be either named in that specific record or that specific record must pertain to them. To find that an unknown party is named in a record without knowing who that party is,

renders the language of RCW 42.56.540 meaningless. Courts are not allowed to subtract or add language to alter the statute. Rather, Courts must interpret the language of a statute as it is written by the legislation giving meaning to every sentence, phrase and word.

Finally, use of pseudonym is redaction and sealing of court records. Courts are required to know and verify the identity of a litigant to assure that person is the true party of interest. Trial Courts are not allowed to skirt the law and rules of the court by playing fast and loose with the rules. In this case, the trial court was aware that sealing of the records was necessary, yet decided not to seal the records. This egregious error must be reversed and the issue of sealing of the court records remanded back for proper application of GR 15 and the Ishikawa Factors.

RESPECTFULLY SUBMITTED this 8th day of August, 2016.

By Donna M Zink

Donna Zink
Pro se

X. CERTIFICATION OF SERVICE

I, Donna Zink, declare that on the 8th day of August, 2016, I did send a true and correct copy of appellant's "*Opening Brief of Appellant Donna Zink*" via e-mail service to:

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By Donna K Zink
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Pro se

XI. APPENDIX A

Revised Code of Washington (RCW)

1. **Chapter 4.24 RCW – Special Rights of Action and Special Immunities**

Sex offenders and kidnapping offenders—Release of information to public—Web site – RCW 4.24.550

Finding—Policy—1990 c 3 § 117: "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

RW 4.24.550 (Legislative Intent)

1. **Chapter 9.94A RCW - Sentencing Reform Act of 1981**

Definitions - RCW 9.94A.030(33)

(33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
...
(c) Assault of a child in the second degree;
(d) Child molestation in the second degree;
....
(g) Incest when committed against a child under age fourteen;
(h) Indecent liberties;
...
(i) Kidnapping in the second degree;
....
(m) Promoting prostitution in the first degree;
(n) Rape in the third degree;
...
(p) Sexual exploitation;
....
(s) Any other class B felony offense with a finding of sexual motivation;
...
(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

RCW 9.94A.030(33)(a, c, d, g, h, i, m, n, p, s, u, v(i-ii), w)

Plea agreements and sentences for certain offenders - Public Records - RCW 9.94A.475

Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes *shall be made and retained as public records if the felony crime involves*:

(1) Any violent offense as defined in this chapter;

(2) Any most serious offense as defined in this chapter;

(3) Any felony with a deadly weapon special verdict under RCW 9.94A.825;

(4) Any felony with any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both;

(5) The felony crimes of possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun in a felony; or

(6) The felony crime of driving a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.502, and felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504.
RCW 9.94A.475 (emphasis added).

Judgment and sentence document - Delivery to caseload forecast council - RCW 9.94A.480

(1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and *the sentences for any and all felony crimes kept as public records under RCW 9.94A.475* shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. *Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.*

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council.
RCW 9.94A.480

Special sex offender sentencing alternative - RCW 9.94A.670

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27

L.Ed.2d 162 (1970) and State v. Newton, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less

than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8) (a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10) (a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.
RCW 9.94A.670 (emphasis added).

2. Chapter 10.97 RCW – Washington State Criminal Records Privacy Act

Restricted, unrestricted information—Records. RCW 10.97.050

(1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every

dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

(8) In addition to the other provisions in this section allowing dissemination of criminal history record information, RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses as defined by RCW 9.94A.030. Criminal justice agencies, their employees, and officials shall be immune from civil liability for dissemination on criminal history record information concerning sex offenders as provided in RCW 4.24.550.
RCW 10.97.050

1. **Chapter 13.40 RCW – Juvenile Justice Act of 1977**

Special sex offender disposition alternative - RCW 13.40.162

(1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The respondent's version of the facts and the official version of the facts;

(ii) The respondent's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(3) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions,

that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years.

(4) As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(a) Devote time to a specific education, employment, or occupation;

(b) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(c) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(d) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(e) Report as directed to the court and a probation counselor;

(f) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(g) Make restitution to the victim for the cost of any counseling reasonably related to the offense; or

(h) Comply with the conditions of any court-ordered probation bond.

(5) If the court orders twenty-four hour, continuous monitoring of the offender while on probation, the court shall include the basis for this condition in its findings.

(6)(a) The court must order the offender not to attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

(b) The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district.

(c) The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(b) At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

(c) Except as provided in this subsection, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW.

(d) A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance

of the offender's home; and (iii) the evaluation and treatment plan comply with this subsection and the rules adopted by the department of health.

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

(c) The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(9) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(10) A disposition entered under this section is not appealable under RCW 13.40.230.
RCW 13.40.162

2. **Chapter 13.50 RCW – Keeping and Release of Records by Juvenile Justice or Care Agencies**

Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. RCW 13.50.010

*** CHANGE IN 2016 *** (SEE 2405-S.SL) ***
*** CHANGE IN 2016 *** (SEE 1999-S4.SL) ***
*** CHANGE IN 2016 *** (SEE 1541-S4.SL) ***

(1) For purposes of this chapter:

(a) "Good faith effort to pay" means a juvenile offender has either (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show

good cause why he or she paid an amount less than eighty percent of the value of full monthly payments;

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(c) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(e) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any

juveniles or parents mentioned in the records without the named individual's written permission.

(11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombuds.

(12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.270 and 13.50.100(3).

(13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

(14) The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.53.045. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW 2.53.045.
RCW 13.50.010.

Records Relating to Commission of Juvenile Offenses—Maintenance Of, Access To, and Destruction - RCW 13.50.050

(1) This section and RCW 13.50.260 and 13.50.270 govern records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW 13.50.260.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this chapter, RCW 13.40.215 and 4.24.550.

(4) Except as otherwise provided in this chapter, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.
RCW 13.50.050(1)(2)(3)(4)(emphasis added).

3. Chapter 18.155 RCW - Sex Offender Treatment Providers

Definitions RCW 18.155.020

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW.

(2) "Certified affiliate sex offender treatment provider" means a licensed, certified, or registered health professional who is certified as an affiliate to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW under the supervision of a certified sex offender treatment provider.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health.

(5) "Sex offender treatment provider" or "affiliate sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.
RCW 18.155.020.

Certificate required – RCW 18.155.030

(1) No person shall represent himself or herself as a certified sex offender treatment provider or certified affiliate sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670 and 13.40.160;

(b) Treatment of convicted level III sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated level III juvenile sex offenders who are ordered into treatment pursuant to chapter 13.40 RCW;

(c) Except as provided under subsection (3) of this section, treatment of sexually violent predators who are conditionally released to a less restrictive alternative pursuant to chapter 71.09 RCW.

(3) A certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may not perform or provide treatment of sexually violent predators under subsection (2)(c) of this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(4) Certified sex offender treatment providers and certified affiliate sex offender treatment providers may perform or provide the following service: Treatment of convicted level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated juvenile level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 13.40 RCW.
RCW 18.155.030.

4. Chapter 42.56 RCW - Public Records Act

PRA Construction – RCW 42.56.030

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.
RCW 42.56.030

Documents and indexes to be made public – RCW 42.56.070(1)

Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.
RCW 42.56.070(1)

Court protection of public records - RCW 42.56.540

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would

substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.
RCW 42.56.540

Judicial review of agency actions - RCW 42.56.550

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.
RCW 42.56.550

5. Chapter 70.02 RCW - Adult Corrections

Definitions (as amended by 2014 c 220) - RCW 70.02.010

(14) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(16) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(18) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(21) "Information and records related to mental health services" means a type of health care information that relates to all information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness. The term includes mental health information contained in a medical bill, registration records, as defined in RCW 71.05.020, and all other records regarding the person maintained by the department, by regional support networks and their staff, and by treatment facilities. The term further includes documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020

or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community mental health program as defined in RCW 71.24.025(6). The term does not include psychotherapy notes.

(27) "Mental health professional" ((has the same meaning as in RCW 71.05.020)) means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of social and health services under chapter 71.05 RCW, whether that person works in a private or public setting.

(31) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(44) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

RCW 70.02.010 (14, 16, 18, 21, 27, 31, 44).

Mental health services, confidentiality of records—Permitted disclosures. (Effective until April 1, 2016.) - RCW 70.02.230

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

RCW 70.02.230.

Mental health services—Department of corrections. (Effective until April 1, 2016.) - RCW 70.02.250

(1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.
RCW 70.02.250.

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective until April 1, 2016.) – RCW 71.05.445

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.
RCW 71.05.445.

Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. - RCW 72.09.345

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(6) The committee shall classify as risk level I those sex offenders whose risk assessments indicate they are at a low risk to sexually reoffend within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate they are at a moderate risk to sexually reoffend within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate they are at a high risk to sexually reoffend within the community at large.
RCW 72.09.345(1)(6).

Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies – RCW 72.09.585

(6) The information received by the department under RCW 71.05.445 or 70.02.250 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. **RCW 72.09.585(6).**

6. Chapter 71.05 RCW - MENTAL ILLNESS

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (*Effective until April 1, 2016.*) - RCW 71.05.445

Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective until April 1, 2016.)

(1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service

provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by email or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(6) Whenever federal law or federal regulations restrict the release of information and records related to mental health services for any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.
RCW 71.05.445

XII. APPENDIX B

1. Washington Administrative Code 246-930 Sex Offender Treatment Provider

Requirements for certification - WAC 246-930-065 -

(1) An applicant for certification must:

(a) Be credentialed as a *health professional* as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

(b) Successfully complete an education program as required in WAC 246-930-030;

(c) Successfully complete an examination;

(d) Be able to practice with reasonable skill and safety; and

(e) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.
WAC 246-930-065

Standards for assessment and evaluation reports - WAC 246-930-320

(1) General considerations in evaluating clients. Providers and affiliates shall:

(a) Be knowledgeable of current assessment procedures used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the client;

(c) Be knowledgeable of the client's legal status including any court orders applicable.

(d) Have a full understanding of the SSOSA and SSODA process, if applicable, and be knowledgeable of relevant criminal and legal considerations;

(e) Be impartial;

(f) Provide an objective and accurate base of data; and

(g) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator.

(2) Providers and affiliates must complete written evaluation reports. These reports must:

(a) Be accurate, comprehensive and address all of the issues required for court or other disposition;

(b) Present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Include the referral sources, the conditions surrounding the referral and the referral questions addressed;

(d) Include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:

(i) Collateral information including:

(A) Police reports;

(B) Child protective services information; and

(C) Criminal correctional history;

(ii) Interviews with the client;

(iii) Interviews with significant others;

(iv) Previous assessments of the client such as:

(A) Medical;

(B) Substance abuse; and

(C) Psychological and sexual deviancy;

(v) Psychological/physiological tests;

(e) Address, at a minimum, the following issues:

(i) A description of the current offense(s) or allegation(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and client's versions of the offenses or allegations;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offensive behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Risk factors for offending behavior including:

(A) Alcohol and drug abuse;

(B) Stress;

(C) Mood;

(D) Sexual patterns;

(E) Use of pornography; and

(F) Social and environmental influences;

(vi) A personal history including:

(A) Medical;

(B) Marital/relationships;

(C) Employment;

(D) Education; and

(E) Military;

(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning including coping abilities, adaptation style, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment if these assessments have been conducted;

(f) Include conclusions and recommendations. The conclusions and recommendations shall be supported by the data presented in the report and include:

(i) The evaluator's conclusions regarding the appropriateness of community treatment;

(ii) A summary of the evaluator's diagnostic impressions;

(iii) A specific assessment of relative risk factors, including the extent of the client's dangerousness in the community at large; and

(iv) The client's willingness for outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(g) Include a proposed treatment plan which is clear and describes in detail:

(i) Anticipated length of treatment, frequency and type of contact with providers or affiliates, and supplemental or adjunctive treatment;

(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety; and

(iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program.

(3) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included.

(4) Second evaluations shall state whether prior evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider or affiliate. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (2) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(5) The provider or affiliate who provides treatment shall submit to the court and the parties a statement that the provider or affiliate is either adopting the proposed treatment plan or submitting an alternate plan. Any alternate plan and the statement shall be provided to the court before sentencing. Any alternate plan must include the treatment methods described in WAC 246-930-332(1). **WAC 246-930-320**.

XIII. APPENDIX C

1. Civil Court Rules (CR)

Process – CR 4

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or the plaintiff's attorney, and directed to the defendant requiring the defendant to defend the action and to serve a copy of the defendant's appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of the defendant's defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning the defendant to serve a copy of the defendant's defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against the defendant by default. It shall be signed and dated by the plaintiff, or

the plaintiff's attorney, with the addition of the plaintiff's post office address, at which the papers in the action may be served on the plaintiff by mail.
CR 4(a)(b)

Forms of Pleadings and Other Papers - CR 10(a)(1)

(a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.

(1) Names of Parties. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) Unknown Names. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in the plaintiff's pleading, and such defendant may be designated in any pleading or proceeding by any name, and when the defendant's true name shall be discovered, the pleading or proceeding may be amended accordingly.
CR 10(a)(1)(2).

Parties, Plaintiffs and Defendants; Capacity - CR 17(a)

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in the party's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
CR 17(a).

Class Actions – CR 23

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action To Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate,

(A) an action may be brought or maintained as a class action with respect to particular issues, or

(B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters. The orders may be combined with an order under rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses,
litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this
rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the

claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.
CR 23

XIV. APPENDIX D

1. General Court Rules

Destruction, Sealing and Redaction of Court Records – GR 15

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) Destroy. To destroy means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(6) Restricted Personal Identifiers are defined in GR 22(b)(6).

(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.

(8) Vacate. To vacate means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must

also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A conviction has been vacated; or

(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(E) The redaction includes only restricted personal identifiers contained in the court record; or

(F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a

criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number,
case type with the notification "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event

of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall;

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks
under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public
auditor, or the Commission on Judicial Conduct in the exercise of duties conferred by statute.
GR 15

Access to Court Records – GR 31

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

(A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.

(B) Determine, in its discretion, that filling the request will not violate this rule.

(C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.

(D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

(3) Criminal justice agencies may request court records not publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records

(1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

(2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.

(3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

(h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.

(i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to

relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

GR 31

Access to Administrative Records - General Principles – GR 31.1

(a) Policy and Purpose. Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to administrative records. A presumption of access applies to the judiciary's administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

(b) Overview of Public Access to Judicial Records. There are three categories of judicial records.

(1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as "court records," and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.

(2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of "administrative records" is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (l) of this rule.

(3) Chambers records are records that are controlled and maintained by a judge's chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

PROCEDURES FOR ADMINISTRATIVE RECORDS

(c) Procedures for Records Requests.

(1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES. Each court and judicial agency must adopt a policy implementing this rule and setting forth its procedures for accepting and responding to administrative records requests. The policy must include the designation of a public records officer and shall require that requests from the identified individual or, if an entity, an identified entity representative, be submitted in writing to the designated public records officer. Best practices for handling administrative records requests shall be developed under the authority of the Board for Judicial Administration.

COMMENT: When adopting policies and procedures, courts and judicial agencies will need to carefully consider many issues, including the extent to which judicial employees may use personally owned computers and other media devices to conduct official business and the extent to which the court or agency will rely on the individual employee to search his or her personally owned media devices for documents in response to a records request. For judicial officers and their chambers staff, documents on personal media devices may still qualify as chambers records, see section (m) of this rule.

(2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE RECORDS. Each court and judicial agency must prominently publish the procedures for requesting access to its administrative records. If the court or judicial agency has a website, the procedures must be included there. The publication shall include the public records officer's work mailing address, telephone number, fax number, and e-mail address.

(3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a written request for access to an administrative record within five working days of its receipt, but for courts that convene infrequently no more than 30 calendar days, from the date of its receipt. The response shall acknowledge receipt of the request and include a good-faith estimate of the time needed to respond to the request. The estimate may be later revised, if necessary. For purposes of this rule, "working days" mean days that the court or judicial agency, including a part-time municipal court, is open.

(4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must communicate with the requester as necessary to clarify the records being requested. The court or judicial agency may also communicate with the

requester in an effort to determine if the requester's need would be better served with a response other than the one actually requested.

(5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to the substance of the records request within the timeframe specified in the court's or judicial agency's initial response to the request. If the court or judicial agency is unable to fully comply in this timeframe, then the court or judicial agency should comply to the extent practicable and provide a new good faith estimate for responding to the remainder of the request. If the court or judicial agency does not fully satisfy the records request in the manner requested, the court or judicial agency must justify in writing any deviation from the terms of the request.

(6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS. If a particular request is of a magnitude that the court or judicial agency cannot fully comply within a reasonable time due to constraints on the court's or judicial agency's time, resources, and personnel, the court or judicial agency shall communicate this information to the requester. The court or judicial agency must attempt to reach agreement with the requester as to narrowing the request to a more manageable scope and as to a timeframe for the court's or judicial agency's response, which may include a schedule of installment responses. If the court or judicial agency and requester are unable to reach agreement, then the court or judicial agency shall respond to the extent practicable and inform the requester that the court or judicial agency has completed its response.

(7) RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY. A court or judicial agency may deny a records request if it determines that: the request was made to harass or intimidate the court or judicial agency or its employees; fulfilling the request would likely threaten the security of the court or judicial agency; fulfilling the request would likely threaten the safety or security of judicial officers, staff, family members of judicial officers or staff, or any other person; or fulfilling the request may assist criminal activity.

(d) Review of Records Decision.

(1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to a public records request shall include a written summary of the procedures under which the requesting party may seek further review.

(2) DEADLINE FOR SEEKING INTERNAL REVIEW. A record requester's petition under section (d)(3) seeking internal review of a public records officer's decision must be submitted within 90 days of the public records officer's decision.

(3) INTERNAL REVIEW WITHIN COURT OR AGENCY. Each court and judicial agency shall provide a method for review by the judicial agency's director, presiding judge, or judge designated by the presiding judge. For a judicial agency, the presiding judge shall be the presiding judge of the court that oversees the agency. The court or judicial agency may also establish intermediate levels of review. The court or judicial agency shall make publicly available the applicable forms. The review proceeding is informal and summary. The review proceeding shall be held within five working days, but for courts that convene infrequently no more than 30 calendar days, from the date the court or agency receives the request for review. If that is not reasonably possible, then within five working days the review shall be scheduled for the earliest practical date.

(4) EXTERNAL REVIEW. Upon the exhaustion of remedies under section (d)(3), a record requester aggrieved by a court or agency decision may obtain further review by choosing between the two alternatives set forth in subsections (i) and (ii) of this section (d)(4).

(i) REVIEW VIA CIVIL ACTION IN COURT. The requesting person may use a judicial writ of mandamus, prohibition, or certiorari to file a civil action in superior court challenging the records decision.

COMMENT: Subsection (i) does not create any new judicial remedies, but merely recognizes existing procedures for initiating a civil action in court.

(ii) INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE DECISION MAKER. The requesting person may seek informal review by a person outside the court or judicial agency. If the requesting person seeks review of a decision made by a court or made by a judicial agency that is directly reportable to a court, the outside review shall be by a visiting judicial officer. If the requesting person seeks review of a decision made by a judicial agency that is not directly reportable to a court, the outside review shall be by a person agreed upon by the requesting person and the judicial agency. In the event the requesting person and the judicial agency cannot agree upon a person, the presiding superior court judge in the county in which the judicial agency is located shall either conduct the review or appoint a person to conduct the

review. The review proceeding shall be informal and summary. The decision resulting from the informal review proceeding may be further reviewed in superior court pursuant to a writ of mandamus, prohibition, or certiorari. Decisions made by a judge under this subsection (ii) are part of the judicial function.

(iii) DEADLINE FOR SEEKING EXTERNAL REVIEW. A request for external review must be submitted within 30 days of the issuance of the court or judicial agency's final decision under section (d)(3).

(e) Monetary Awards Not Allowed. Attorney fees, costs, civil penalties, or fines may not be awarded under this rule.

(f) Persons Who Are Subjects of Records.

(1) Unless otherwise required or prohibited by law, a court or judicial agency has the option of notifying a person named in a record or to whom a record specifically pertains, that access to the record has been requested.

(2) A person who is named in a record, or to whom a record specifically pertains, may present information opposing the disclosure to the applicable decision maker under sections (c) and (d).

(3) If a court or judicial agency decides to allow access to a requested record, a person who is named in that record, or to whom the record specifically pertains, has a right to initiate review under subsections (d)(3)-(4) or to participate as a party to any review initiated by a requester under subsections (d)(3)-(4). If either the record subject or the record requester objects to informal review under subsection (d)(4)(ii), such alternative shall not be available. The deadlines that apply to a requester apply as well to a person who is a subject of a record.

(g) Court and Judicial Agency Rules. Each court may from time to time make and amend local rules governing access to administrative records not inconsistent with this rule. Each judicial agency may from time to time make and amend agency rules governing access to its administrative records not inconsistent with this rule.

(h) Charging of Fees.

(1) A fee may not be charged to view administrative records, except the requester may be charged for research required to locate, obtain, or prepare the records at the rate set forth in section (h)(4).

(2) A fee may be charged for the photocopying or scanning of administrative records. If another court rule or statute specifies the amount of the fee for a particular type of record, that rule or statute shall control. Otherwise, the amount of the fee may not exceed the amount that is authorized in the Public Records Act, chapter 42.56 RCW.

(3) The court or judicial agency may require a deposit in an amount not to exceed the estimated cost of providing copies for a request. If a court or judicial agency makes a request available on a partial or installment basis, the court or judicial agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within 30 days, the court or judicial agency is not obligated to fulfill the balance of the request.

(4) A fee not to exceed $30 per hour may be charged for research and preparation services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.

COMMENT: The authority to charge for research services is discretionary, allowing courts to balance the competing interests between recovering the costs of their response and ensuring the open administration of justice. The fee should not exceed the actual costs of response.

(5) A court or judicial agency may require prepayment of fees.

APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS

This rule applies to all administrative records, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record.

(i) Definitions.

(1) "Access" means the ability to view or obtain a copy of an administrative record.

(2) "Administrative record" means a public record created by or maintained by a court or judicial agency and related to the management, supervision, or administration of the court or judicial agency.

COMMENT: The term "administrative record" does not include any of the following: (1) "court records" as defined in GR 31; (2) chambers records as set forth later in this rule; or (3) an attorney's client files that would otherwise be covered by the attorney-client privilege or the attorney work product privilege.

(3) "Court record" is defined in GR 31.

(4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(5) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(5) "Public record" includes any writing, except chambers records and court records, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any court or judicial agency regardless of physical form or characteristics. "Public record" also includes metadata for electronic administrative records.

COMMENT: See O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010) (defining "metadata").

(6) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

COMMENT: E-mails and telephone records are included in this broad definition of "writing."

(j) Administrative Records—General Right of Access. Court and judicial agency administrative records are open to public access unless access is exempted or prohibited under this rule, other court rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the judiciary's administrative records, access is also exempt or prohibited under this rule. To the extent that an ambiguity exists as to whether records access would be exempt or prohibited under this rule or other enumerated sources, responders and reviewing authorities shall be guided by the Public Records Act, chapter 42.56 RCW, in making interpretations under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, a court or judicial agency shall delete identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the deletion shall be provided fully in writing.

(k) Entities Subject to Rule.

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial agencies:

(i) All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(ii) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees;

(iii) The Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense; and

(iv) All subgroups of the entities listed in this section (k)(1).

COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.

(2) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by [a proposed General Rule 12.4, pending before the Supreme Court].

(3) A judicial officer is not a court or judicial agency.

COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.

(4) An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.

(5) A person or entity entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express written authority from the court or judicial agency or separate authority in court rule to grant access to the documents.

COMMENT: Judicial e-mails and other documents sometimes reside on IT servers, some are in off-site physical storage facilities. This provision prohibits an entity that operates the IT server from disclosing judicial records. The entity is merely a bailee, holding the records on behalf of a court or judicial agency, rather than an owner of the records having independent authority to release them. Similarly, if a court or judicial agency puts its paper records in storage with another entity, the other entity cannot disclose the records. In either instance, it is the court or judicial agency that needs to make the decision as to releasing the records. The records request needs to be addressed by the court's or judicial agency's public records officer, not by the person or entity having control over the IT server or the storage area. On the other hand, if a court or judicial agency archives its records with the state archivist, relinquishing by contract its own authority as to disposition of the records, the archivist would have separate authority to disclose the records.

Because of this rule's broad definition of "public record", this paragraph (6) would apply to electronic records, such as e-mails (and their metadata) and telephone records, among a wide range of other records.

(l) Exemptions. In addition to exemptions referred to in section (j), the following categories of administrative records are exempt from public access:

(1) Requests for judicial ethics opinions;

(2) Minutes of meetings held exclusively among judges, along with any staff;

COMMENT: Meeting minutes do not always contain information that needs to be withheld from public access. Courts have discretion whether to release meeting minutes, because an exemption from this rule merely means that a document is not required to be disclosed. Disclosure would be appropriate if the document does not contain information of a confidential, sensitive, or protected nature. Courts and judicial agencies are encouraged to carefully consider whether some, or all, of their meeting minutes should be open to public access. Adopting a local rule on this issue would assist the public in knowing which types of minutes are accessible and which are not.

(3) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended are exempt under this rule, except that a specific record is not exempt when publicly cited by a court or agency in connection with any court or agency action. This exemption applies to a record only while a final decision is pending on the issue that is being addressed in that record; once the final decision has been made, the record is no longer covered by this exemption. For purposes of documents related to budget negotiations with a budgetary authority, the "final decision" is the decision by the budgetary authority to adopt the budget for that year or biennium.

(4) Evaluations and recommendations concerning candidates seeking appointment or employment within a court or judicial agency;

COMMENT: Paragraph (4) is intended to encompass documents such as those of the Supreme Court's Capital Counsel Committee, which evaluates attorneys for potential inclusion on a list of attorneys who are specially qualified to represent clients in capital cases.

(5) Personal identifying information, including individuals' home contact information, Social Security numbers, date of birth, driver's license numbers, and identification/security photographs;

(6) Documents related to an attorney's request for a trial or appellate court defense expert, investigator, or other services, any report or findings submitted to the attorney or court or judicial agency by the expert, investigator, or other service provider, and the invoicing of the expert, investigator or other service provider during the pendency of the case in any court. Payment records are not exempt, provided that they do not include medical records, attorney work product, information protected by attorney-client privilege, information sealed by a court, or otherwise exempt information;

(7) Documents, records, files, investigative notes and reports, including the complaint and the identity of the complainant, associated with a court's or judicial agency's internal investigation of a complaint against the court or judicial agency or its contractors during the course of the investigation. The outcome of the court's or judicial agency's investigation is not exempt;

(8) [Reserved];

(9) Family court mediation files; and

(10) Juvenile court probation social files.

(11) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans, the disclosure of which would have a substantial likelihood of threatening the security of a judicial facility or any individual's safety.

(12) The following records of the Certified Professional Guardian Board:

(i) Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process. Investigative records related to a grievance become open to public inspection once the investigation is completed.

(ii) Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.

(iii) A grievance shall be open to public access, along with any response to the grievance submitted by the professional guardian or agency, once the investigation into the grievance has been completed or once a decision has been

made that no investigation will be conducted. The name of the professional guardian or agency shall not be redacted from the grievance.

CHAMBERS RECORDS

(m) Chambers Records. Chambers records are not administrative records and are not subject to disclosure.

COMMENT: Access to chambers records could necessitate a judicial officer having to review all records to protect against disclosing case sensitive information or other information that would intrude on the independence of judicial decision-making. This would effectively make the judicial officer a de facto public records officer and could greatly interfere with judicial functions.

(1) "Chambers record" means any writing that is created by or maintained by any judicial officer or chambers staff, and is maintained under chambers control, whether directly related to an official judicial proceeding, the management of the court, or other chambers activities. "Chambers staff" means a judicial officer's law clerk, a judicial officer's administrative staff, and any other staff when providing support directly to the judicial officer at chambers.

COMMENT: Some judicial employees, particularly in small jurisdictions, split their time between performing chambers duties and performing other court duties. An employee may be "chambers staff" as to certain functions, but not as to others. Whether certain records are subject to disclosure may depend on whether the employee was acting in a chambers staff function or an administrative staff function with respect to that record.

Records may remain under chambers control even though they are stored elsewhere. For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices would still be chambers records. As a further example, records that are stored for a judicial chambers on external servers would still be under chambers control to the same extent as if the records were stored directly within the chambers. However, records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure.

(2) Court records and administrative records do not become chambers records merely because they are in the possession or custody of a judicial officer or chambers staff.

COMMENT: Chambers records do not change in character by virtue of being accessible to another chambers. For example, a data base that is shared by multiple judges and their chambers staff is a "chambers record" for purposes of this rule, as long as the data base is only being used by judges and their chambers staff.

IMPLEMENTATION AND EFFECTIVE DATE

(n) Best Practices. Best practice guidelines adopted by the Supreme Court may be relied upon in acting upon public requests for documents.

(o) Effective Date of Rule.

(1) This rule will go into effect on a future date to be determined by the Supreme Court based upon a recommendation from the Board for Judicial Administration. The rule will apply to records that are created on or after that date.

COMMENT: A delayed effective date is being used to allow time for development of best practices, training, and implementation. The effective date will be added to the rule once it has been determined.

(2) Public access to records that are created before that date are to be analyzed according to other court rules, applicable statutes, and the common law balancing test. The Public Records Act, chapter 42.56 RCW, does not apply to judicial records, but it may be used for non-binding guidance.
GR 31.1